

Agreement Under 10 U.S.C. 2371
between
The United States of America
Department of Defense, Department of the Army
U.S. Army Tank-automotive and Armaments Command
Warren, Michigan 48397-5000

and

Engineered Machined Products, Inc. (EMP)
P.O. Box 1246
3111 N. 28th Street
Escanaba, Michigan 49829

Concerning

Advanced Pumping Technologies for Parasitic Reduction Program

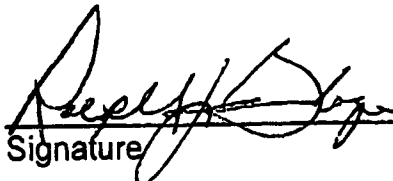
Agreement No.: DAAE07-01-3-0004

Total Amount of the Agreement:	\$ 1,627,535.00
Government share:	\$ 813,767.50
Recipient share:	\$ 813,767.50

Effective on the date of the Grants Officer signature below:

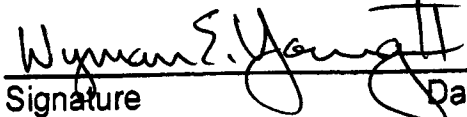
For Engineered Machined Products

For the United States of America
TACOM

 04/06/01

Signature Date

Ralph Bedogne
Vice President, Finance
and Governmental Affairs

 6 Apr 01

Signature Date

Wyman E. Young II, Grants Officer

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PART I. ADMINISTRATIVE INFORMATION

Article 1. Definitions

The term "parties" as used herein shall refer to Engineered Machined Products, Inc., (hereinafter referred to as EMP) and the United States of America, hereinafter called the Government, represented by the U.S. Army Tank-automotive and Armaments Command.

The term "agreement" as used herein shall refer to these articles and the attachments hereto.

The term "agreement year" as used herein shall refer to each consecutive twelve month period from the effective date of this agreement throughout the term of the agreement.

The term "invention" shall mean any invention or discovery which is or may be patented or otherwise protected under Title 35 of the United States Code.

The term "Recipient" shall refer to EMP.

The term "Recipient inventions and technologies" shall refer to those inventions that were conceived, created or discovered and reduced to practice by Recipient prior to entering into this agreement and those technologies first discovered or conceived by Recipient prior to entering into this agreement and that are listed on Attachment 3. The Recipient and Government agree that Recipient shall retain sole and exclusive right, title and interest throughout the world to the inventions and technologies listed in Attachment 3 and that the Government shall not acquire any right, title, interest in or license to any Recipient inventions and technologies as a result of its incorporation into this agreement.

The term "sub-recipient" shall refer to any party the recipient chooses to engage in a collaborative research effort for the purpose and within the SOW set forth within, at Attachment 1.

The term "subject invention" shall refer to an invention of Recipient conceived or first actually reduced to practice in the SOW outlined in Attachment 1.

The term "limited rights data" shall refer to data, other than computer software, that are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at Recipient's expense, including minor modifications thereof.

The term "Government Program Manager (PM)" shall refer to the Government individual responsible for reviewing and approving all deliverables, including technical and business reports, as well as requests for reimbursement of costs by the Recipient.

The term "program" shall refer to the Advanced Pumping Technologies for Parasitic Reduction Program.

The term "project management team" shall refer to the Government and Recipient workforce needed to successfully develop and complete the project outlined in the attached SOW.

Article 2. Administrative Requirements

A. This agreement will be administered in accordance with, and the Recipient shall comply with the requirements of, the DoD Grant and Agreement Regulations (DoDGARs) (13 Apr 98)

B. In the event of a conflict between the terms of this agreement and other governing documents, the following shall be the order of precedence, in descending order:

1. The articles in this agreement
2. The attachments to this agreement
3. The DoDGARS and OMB circulars referenced under this agreement.

Article 3. Administrative Responsibilities

Grants Officer: Mr. Wyman E. Young II
U.S. Army tank-automotive and Armaments Command
ATTN: AMSTA-CM-ABGB (Mail Stop 321)
Warren, Michigan 48397-5000
Phone: [810] 574-8093
Email: younge@tacom.army.mil

Agreement Specialist: Mr. Allen Traciak
U.S. Army tank-automotive and Armaments Command
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Administrative Grants Officer: Mr. Phil Goettel
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Email: pgoettel@dcmdc.dcm.mil

Government Program Manager: Mr. Brad McNett
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Email: mcnett@tacom.army.mil

Payment Office: DFAS Columbus Center
DFAS/CO-JNB/Bunker Hill
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Columbus, OH 43218-2077
Phone: [800] 756-4571

Government Program Engineer: Mr. Don Kendall
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Servicing Staff
Judge
Advocate's
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(for invention
reporting) Mr. David L. Kuhn
U.S. Army TACOM
Intellectual Property Law Division
ATTN: AMSTA-LP (Building 200)
Warren, Michigan 48397-5000
Phone: [810] 574-6552
Email: kuhnd@tacom.army.mil

PART II. TERM

Article 4. Term of the Agreement

The term of this agreement commences on the effective date shown on the face of the agreement, and continues for (24) twenty-four months. If all funds are expended prior to the end of the term (including Recipient contributions), the parties have no obligation to continue performance and may elect to cease development at that point. Articles in this agreement which by their express terms or by necessary implication, apply for periods of time other than as specified in this article shall be given effect, notwithstanding this article.

Article 5. Termination

A. The grants officer may terminate this agreement by written notice to the Recipient upon a finding that the Recipient has failed to comply with the material provisions of this agreement.

B. Additionally, this agreement may be terminated by either party upon written notice to the other party, based upon a reasonable determination that the project will not produce beneficial results commensurate with the expenditure of resources. Such written notice shall be preceded by consultation between the parties.

C. In the event of a termination of this agreement, the Government shall receive the following:

1. Ownership of any hardware affixed to the government vehicle loaned to Recipient for testing purposes hereunder; and

2. Those rights provided in Articles 23, 24 and 25 to any subject invention, copyright work, and/or data first conceived or developed under this Agreement as of the date of termination.

D. As set forth in Article 17, entitled "Incremental Funding," this agreement will be terminated in the absence of additional government funding as set forth therein.

E. The Government and the Recipient will negotiate in good faith an equitable reimbursement for work performed toward accomplishment of program goals. The Government will allow full credit to the Recipient for the Government share of the obligations properly incurred by the Recipient prior to termination, and those non-cancelable obligations that remain after the termination. The cost principles and procedures described in Article 14, entitled "Cost Principles", shall govern all costs claimed, agreed to, or determined under this article.

F. In event of a termination of this agreement by either party, a final audit shall be performed. If the Recipient resource contributions are less than the amount of Government funds incurred and disbursed, the Recipient will be required to refund any Government funds not matched. However, if this Recipient resource contribution circumstance is known prior to actual termination, the Government and Recipient may negotiate by mutual agreement, an alternative to a refund. This alternative could be in the form of additional work, within the scope of the SOW, performed by the Recipient equal to the amount of funds that would have been refunded.

Article 6. Extending the Term

If the parties agree, the term of this agreement may be extended if funds are available and research opportunities reasonably warrant. Any extension shall be formalized through modification of the agreement by the Grants Officer and the Recipient. If additional work is added to this agreement, a minimum 50% Recipient cost sharing/matching shall apply.

PART III. MANAGEMENT OF THE PROJECT

Article 7. Scope and Management of the Program

A. The Government and the Recipient are bound to each other by a duty of good faith and best effort in achieving the goals of this agreement. This agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

B. The Recipient shall perform a coordinated research and development program carried out in accordance with the SOW entitled "Advanced Pumping Technologies for Parasitic Reduction Program", set forth at Attachment 1 to this agreement. The Recipient shall submit all documentation required by Part VII, Technical and Financial Reporting.

C. The overall management, including technical, programmatic, reporting, financial and administrative matters, of the coordinated research program established under this agreement shall be accomplished by the Recipient. The Government may interact with the Recipient to promote effective collaboration between the Recipient and the Government. All technical and/or funding changes to this agreement must first be approved by the Government, and the agreement modified in accordance with the articles entitled "Modifications."

D. The Recipient will establish a schedule of quarterly technical meetings and notify the Government of the schedule. The Government shall participate in all technical meetings. Other Government personnel and agencies, as deemed appropriate, may also participate.

Article 8. Responsibility

The Government and the Recipient recognize that the contractual relationship for this agreement is between the U.S. Government, Tank-automotive and Armaments Command (TACOM), and Recipient to perform the program entitled "Advanced Pumping Technologies for Parasitic Reduction". Recipient is planning to use one or more sub-recipients to perform selected portions of the work under this agreement. Accordingly, anywhere in the SOW where it may state that a certain sub-recipient has responsibility, it is understood to mean that responsibility vests in EMP as the Recipient, although EMP may elect one or more sub-recipients to perform selected portions of the work.

Article 9. Project Schedule

The Recipient will use their best efforts to follow the initial work plan schedule that is outlined in the Project Schedule (Attachment 2) and described by Phase tasks in the SOW (Attachment 1).

Article 10. Modifications

A. Modifications to this agreement may be proposed by either party. Only the Grants Officer has the authority to act on behalf of the Government to modify this agreement. The Recipient will make recommendations for any modifications to this agreement in writing, including justifications to support any changes to the statement of work and submit them to the Government PM for approval, with copies to the Government Program Engineer (PE) and Agreement Specialist. The Recipient shall detail the technical, chronological, and financial impact of the proposed modification to the program.

B. The Grants Officer may unilaterally make non-material or administrative agreement modifications to this agreement (e.g., changes in the paying office or appropriation data, changes to Government personnel identified in the agreement). Written notice of any Government changes to the agreement shall be provided to Recipient within ten (10) business days of the date such change was made.

Article 11. Title to Personal Property

A. DoDGARS 34.21 applies. Title to each item of non-expendable tangible personal property, including computer software, purchased by the Recipient with either the full or partial use of federal funds under this agreement and that has an acquisition value of \$5,000 or less is vested exclusively in the Recipient.

B. The Recipient shall have conditional title, subject to the disposal instructions below, to each item of non-expendable tangible personal property, including computer software, purchased by Recipient with either the full or partial use of federal funds under this agreement and that has an acquisition value of more than \$5,000. The Recipient must obtain the prior approval of the Grants Officer before making such purchases with either the full or partial use of federal funds under this agreement. Upon termination or expiration of this agreement, these items of non-expendable tangible personal property (including computer software) purchased by the Recipient shall be disposed of in the following order of preference, in descending order:

(1) Recipient shall have a right of first refusal to purchase such property at a price equal to fair market value of the property at the time of sale less the amount contributed by Recipient to the original purchase price of such property; or

(2) Transferred to a Government research facility with title and ownership being transferred to the Government; or

(3) Donated to a mutually agreed University or technical learning center for research purposes; or

(4) Any other TACOM-approved disposition procedure.

C. The Government shall become the owner of any prototype models or hardware installed by Recipient on government vehicles loaned to Recipient for testing purposes under this agreement.

Article 12. Government Furnished Property

A. The following Government property, information, equipment, facilities and services shall be provided upon the written approval of the cognizant agreement officer:

Description: FMTV Truck, S/N 3522, National Stock Number (NSN) 2320-01-354-3386

Condition: This 5-ton, 6-wheel truck is a refurbished test vehicle, which at the time of award of this agreement is having upgrade and refurbishment work being performed on it at the Stewart & Stevenson (S&S) facility in Sealy, Texas. The work being done on

the truck includes the installation of the following new items: diesel engine, six (6) all-terrain tires, 12 volt battery, V-rod rear control arm, and assorted other minor components. The Government will provide the vehicle in a condition suitable for use in performance of the statement-of-work, notwithstanding breaking-in the new engine that may be required to establish baseline performance data.

Location: The recipient will provide at least two authorized, licensed drivers to take possession of the vehicle at the Stewart & Stevenson facility at Sealy, TX, for the purpose of driving it back to the recipient facility in Escanaba, MI.

Availability Date: The vehicle will be available for the Recipient by 30 July 2001.

B. The Government will use its best efforts to provide to the Recipient at the time and locations stated in this agreement, the Government-furnished property stated in this agreement.

C. Title to Government-furnished property will remain with the Government. Recipient will use the Government-furnished property only in connection with this agreement. Recipient will maintain adequate property control records in accordance with sound industrial practice and will make such records available.

D. Upon receipt of Government-furnished property by Recipient, Recipient assumes the risk and responsibility for its loss or damage, except— (1) for reasonable wear and tear; (2) to the extent property is consumed in performing this agreement; or (3) as otherwise provided for by the provisions of this agreement.

E. The term "Recipient's managerial personnel," as used in this article, means any of the Recipient's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of (1) All or substantially all of the Recipient's business; (2) All or substantially all of the Recipient's operation at any one plant, or separate location at which the agreement is being performed; or (3) A separate and complete major industrial operation connected with performing this agreement.

F. The Recipient shall maintain, repair, protect, and preserve the Government property in accordance with sound business practice, and any technical manuals provided by the Government.

G. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

H. The Recipient shall not be liable for loss or destruction of, or damage to, the Government property provided under this agreement or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (1) and (2) below.

(1) The Recipient shall be responsible for loss or destruction of, or damage to, the Government property provided under this agreement (including expenses incidental to such loss, destruction, or damage)--

- (a) That results from a risk expressly required to be insured under this agreement, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
- (b) That results from a risk that is in fact covered by insurance or for which the Recipient is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (c) For which the Recipient is otherwise responsible under the express terms of this agreement;
- (d) That results from willful misconduct or lack of good faith on the part of the Recipient's managerial personnel; or
- (e) That results from a failure on the part of the Recipient, due to willful misconduct or lack of good faith on the part of the Recipient's managerial personnel, to establish and administer a system for the control, use, protection, preservation, maintenance, and repair of the Government property.

(2) If the Recipient fails to act as provided by subdivision (H)(1)(e) above, after being notified (by certified mail addressed to one of the Recipient's managerial personnel) of the Government's disapproval, withdrawal of approval, or non-acceptance of the system, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Recipient's managerial personnel.

In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Recipient can establish by clear and convincing evidence that such loss, destruction, or damage--

- (a) Did not result from the Recipient's failure to maintain an approved system; or
- (b) Occurred while an approved system was maintained by the Recipient.

(3) If the Recipient transfers Government property to the possession and control of a sub-recipient, the transfer shall not affect the liability of the Recipient for loss or destruction of, or damage to, the property as set forth above. However, the Recipient shall require the sub-recipient to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the sub-recipient's possession or control, except to the extent that the sub-recipient agreement, with the advance approval of the Grants Officer, relieves the sub-recipient from such liability. In the absence of such approval, the sub-recipient shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime agreement.

(4) The Recipient shall notify the Grants Officer upon loss or destruction of, or damage to, government property provided under this agreement. The Recipient shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Grants Officer a statement of--

- (a) The lost, destroyed, or damaged Government property;
- (b) The time and origin of the loss, destruction, or damage;
- (c) All known interests in commingled property of which the Government property is a part; and

(d) The insurance, if any, covering any part of or interest in such commingled property.

(5) The Recipient shall repair, renovate, and take such other action with respect to damaged Government property as the Grants Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Recipient's) that separation is impractical, the Recipient may, with the approval of and subject to any conditions imposed by the Grants Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Recipient shall be entitled to an equitable adjustment for the expenditures made in performing the obligations under this subparagraph. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Grants Officer shall give due regard to the Recipient's liability under this paragraph when making any such equitable adjustment.

(6) The Recipient shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Recipient to carry such insurance under another provision of this agreement.

(7) In the event the Recipient is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Recipient shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Grants Officer.

(8) The Recipient shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Grants Officer, the Recipient shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a sub-recipient has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Recipient shall enforce for the benefit of the Government the liability of the sub-recipient for such loss, destruction, or damage.

I. Upon completing this agreement, the Recipient will follow the instructions of the Grants Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The FMTV vehicle, engine, transmission, cooling system, or other OEM components removed from the vehicle in performance of this agreement will be returned to the Government. The Recipient will prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Grants Officer. The net proceeds of any such disposal will be credited to the agreement price or will be paid to the Government as directed by the Grants Officer.

Article 13. Displays and Demonstrations

A. The Recipient agrees to make Recipient inventions and technologies that are the subject of the SOW under this Agreement and any subject inventions reasonably available to the Government, on a mutually agreeable schedule, for the purpose of dynamic model display and demonstration. The Recipient and the Government shall coordinate any unanticipated or nonscheduled use of the requested Recipient inventions and technologies and/or subject inventions, and the Recipient will make a good faith effort to accommodate any such reasonable requests. Actual attendance by Recipient personnel for the purpose of display, demonstration, and dissemination of technical information directly related to the technologies that are the subject of the SOW is limited to the following: SAE Conference in Detroit, and SAE Conference in Portland, taking place in the January through March 2001 time frame.

PART IV. FINANCIAL MATTERS

Article 14. Cost Principles

Federal funds and funds counted as the Recipient's cost share or match shall be used only for costs that:

- A. A reasonable and prudent person would incur, in carrying out the project contemplated by this agreement; and
- B. Are allowable in accordance with DoDGARS 34.17, "Allowable Costs"

Article 15. Standards for Financial Management Systems

A. The Recipient shall maintain adequate records to account for the control and expenditure of Federal funds received and cost matching required under this agreement.

B. The standards for financial management systems at DoDGARS 34.11 apply.

C. The Recipient's relevant financial records for their cost share are subject to examination or audit by or for the Government for a period not to exceed three years after expiration of the term of this agreement. The Grants Officer or designee shall have direct access to sufficient records and information of the Recipient's activities to ensure full accountability for all funding under this agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

D. The Government expects the Defense Contract Audit Agency (DCAA) to conduct any audits we may require, but if the Recipient prefers, they may hire an independent audit firm to conduct any required audits at their own expense. Any audit conducted by an independent audit firm must be conducted according to generally accepted auditing standards, and the principles and standards used for the audit must be the same as those stated above. The Recipient must provide a copy of the independent audit report to the TACOM Grants Officer and Administrative Grants Officer.

Article 16. Obligated Funding

The following funds are obligated to this agreement:

<u>Fund Cite</u>	<u>Amount</u>
ACRN: AA PRON: E112C175EHEH	\$ 281,000.00
21 12040 0000 16D 7675 P622601255Y S20113 JON: 12C175 ACCT. ST: W56HZV	

Article 17. Incremental Funding

A. The Government's share for full performance of this award is \$ 813,767.50. Of this amount, only \$ 281,000.00 is obligated and currently available for payment. In no event is the Government obliged to reimburse the Recipient for expenditures in excess of the total funds obligated by the Government. The Government anticipates that from time to time additional amounts will be obligated to this agreement by unilateral modification, until the total Government share is fully funded.

B. The incremental funding schedule for the Government's share is shown below:

<u>Performance Period</u>	<u>Amount</u>
	<u>NAC</u>
FY 01 (Date of award - November 2001)	\$ 281,000.00
FY 02 (November 2001 - April 2003)	\$ 532,767.50

C. The Recipient shall use their best effort to manage the expenditure of funds, and the time schedule of work planned to be performed under the SOW, to coincide with the project schedule and amount of funds obligated by the Government for that time frame. The project schedule is located at Attachment 2. The Recipient is not obliged to continue performance or otherwise incur costs in excess of the amount obligated by the Government to the agreement plus the Recipient's corresponding share, until the Grants Officer notifies the Recipient in writing that the amount obligated by the Government has been increased and specifies an increased amount, which shall then constitute the total amount obligated by the Government to this agreement. The Government is not obligated to reimburse for costs incurred in excess of the total amount allotted by the Government to this agreement, including any termination costs. When and to the extent that the amount obligated by the Government to the agreement is increased, any costs the Recipient incurs before the increase that are in excess of the amount previously obligated by the Government to the agreement, shall be allowable to the same extent as if incurred afterward, unless the Grants Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

Article 18. Payment

A. This is a cost reimbursable instrument. The provisions at DoDGARS 34.12 apply. The Recipient may request monthly reimbursement for costs during the term of this agreement. The Recipient shall be reimbursed by submitting Requests for Advance or Reimbursement (SF 270s).

B. The Recipient will document the costs incurred for the month and will submit an original invoice (SF 270), which will include a summary of the monthly progress, to the Administrative Grants Officer (AGO) at DCMA Syracuse. The Recipient will provide a copy of the invoice and monthly progress to the Agreement Specialist and to the Government PM. The AGO will approve and forward the invoice to the payment office.

C. Each monthly invoice submitted by the Recipient shall show the total allowable cost incurred, in accordance with Article 14 of this agreement. The Recipient may only bill the Government 50% of this total amount up to the current obligated amount. Recipient will fund the remaining allowable cost.

D. Electronic payments may be made to the Recipient corporation with the information contained in their Central Contractor Registration profile.

E. Final payment cannot be made nor can the agreement be closed out until the Recipient delivers to the Government all disclosures of subject inventions required by this agreement, an acceptable final report pursuant to the article entitled "Final Report", and all confirmatory instruments.

Article 19. Program Income

Recipient shall have no obligation to the Government for program income from sales, license fees and/or royalties for either:

1. Recipient inventions and technologies; or
2. Copyrighted material, patents, patent applications, trademarks, and subject inventions first developed under this agreement

that are earned by Recipient either during the project period or are anticipated to be earned after the end of the project period.

Article 20. Cost Sharing and Matching

A. The provisions of DoDGARS 34.13 and 34.17 apply. The Recipient's contributions may count as cost sharing or matching only to the extent that they are used for authorized purposes of the agreement, are necessary and reasonable for proper and efficient accomplishment of the project, and such purposes are consistent with applicable cost principles.

B. At least half of the total costs incurred during performance of the tasks listed in the SOW shall be paid by the Recipient. The Recipient shall bear at least 50% of the cost of the total amount of the agreement. The parties estimate that the tasks listed in the SOW

for this agreement can only be accomplished with the Recipient aggregate resource contribution of \$813,767.50. The Recipient intends to, and by entering into this agreement will, provide these resources; provided, however, that the actual dollar amount to be contributed by Recipient may be less if this agreement is terminated as provided in Article 5 herein.

C. Recognition of Pre-Award Costs:

Costs may be incurred by the Recipient prior to the award date of the agreement, from 17 Oct 2000 the same as if incurred after the award.

D. The cost share being offered by EMP under this agreement are not sunk costs (i.e. costs incurred prior to 17 October 2000).

PART V. DISPUTES

Article 21. Disputes

A. General

The Parties agree to attempt resolution of any dispute(s), or possible dispute(s) at the lowest organizational level possible. Any/all dispute and/or disagreement shall be serviced by prompt, good faith communication between the Parties. The Parties agree that execution of any dispute(s) under this Article shall not be cause for interruption or delay in the Program.

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute between the Government and Recipient concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may only be raised under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the Parties mutually agree to waive the three (3) month requirement.

3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party through the Agreements Administrator, in writing, of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the Director of TARDEC and EMP's Vice President of Product Development. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being

notified that a decision has been requested. The Director of TARDEC and EMP's Vice President of Product Development shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding unless a Party, within thirty (30) calendar days, requests further review as provided in this Article.

4. Upon written request to the TACOM Principal Assistant Responsible for Contracting (PARC), made within thirty (30) calendar days, or upon unavailability of a joint decision under subparagraph B.3 above, the dispute shall be further reviewed. The TACOM PARC may elect to conduct this review personally or through a designee or jointly with a representative of the other Party who is a senior official of the Party. Following the review, the TACOM PARC or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding. These arrangements do not prevent or constrain either party from seeking remedy at law.

PART VI. INTELLECTUAL PROPERTY RIGHTS

Article 22. Patent Infringement

The Recipient agrees not to hold the U.S. Government responsible for any and all patent infringement cases which may arise under any research projects conducted under this agreement. In addition, the Recipient shall indemnify the Government against all claims and proceedings for actual or alleged direct or contributory infringement of, or inducement to infringe, any U.S. or foreign patent, trademark, or copyright arising under this agreement and the Recipient shall hold the Government harmless from any resulting liabilities and losses provided the Recipient is reasonably notified of such claims and proceedings.

Article 23. Inventions

A. Subject Inventions. The clause entitled "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms" (37 CFR 401) is hereby incorporated by reference for inventions made with Government funding and the clauses in paragraph 401.14 are modified as follows: replace the word "contractor" with "Recipient"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "government"; replace the word "contract" with "agreement"; delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1); paragraph (1), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office identified elsewhere in this agreement. The Recipient shall retain the entire right, title and interest throughout the world to each subject invention under this agreement. The Government shall be entitled to a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States each subject invention throughout the world.

B. Recipient Inventions and Technologies. The Recipient and Government agree that Recipient shall retain the entire right, title and interest throughout the world to each of the Recipient inventions and technologies listed in Attachment 3 and that the Government shall not acquire any right, title, interest in or license to Recipient inventions and technologies as a result of Recipient's incorporation of it into this agreement.

C. The Recipient shall file Invention (Patent) Reports disclosing any subject inventions as of the close of the performance year and at the end of the term for this Agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 60 days after the expiration of the final performance period. The Recipient shall use DD Form 882, Report of Inventions and Subcontracts, to file an inventions report. Negative reports are also required. The Recipient shall submit the original and one copy to the servicing Staff Judge Advocate's office, one copy to the Grants Administration Office, and one copy to the grants officer, if different than the Grants Administration Office.

Article 24. Data Rights

A. Title to and the right to determine the disposition of data and technical data (excluding computer software, as defined in 48 CFR 27.401, and computer software models) first generated under this agreement shall vest in the Recipient. As of the execution of this agreement, the Government and Recipient agree that the deliverable data and technical data that is anticipated to be first generated under this agreement shall be that data and technical data listed in Attachment 5. The Government shall receive those rights specified in Attachment 5 for the data and technical data that is listed in Attachment 5. The Government shall receive Government Purpose Rights in all data and technical data that is first generated under this Agreement and that is not listed in Attachment 5.

B. The Recipient reserves the right to protect by copyright original works developed under this agreement. All such copyrights will be in the name of the Recipient. The Recipient hereby grants the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this agreement, and to authorize others to do so. The Recipient also grants non-exclusive, non-transferable, royalty-free, fully paid-up licenses to project sub-Recipients to use any copyrighted material developed under this agreement for research purposes as necessary to fulfill the requirements of this agreement.

C. The Recipient is responsible for affixing appropriate markings indicating rights on any data and technical data and fit, form and function data (excluding computer software) that is delivered to the Government with Government Purpose Rights or Limited Rights, as shown below. The Government shall be deemed to have unlimited rights in all data and fit, form and function data and technical data (excluding computer software) delivered without markings.

D. General marking instructions: The Recipient, or its sub-Recipients or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

Data and technical data delivered or otherwise furnished to the Government with Government purpose rights or limited rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS LEGEND

Agreement No: DAAE07-01-3-0004
Engineered Machined Products Inc.
3111 N. 28th Street, P.O. Box 1246
Escanaba, MI 49829

The restrictions governing the use and disclosure of data/technical data marked with this legend are set forth in the definition "Government Purpose Rights" in paragraph (b)(2) of DFARS 252.227-7013.

LIMITED RIGHTS LEGEND

Agreement No: DAAE07-01-3-0004
Engineered Machined Products Inc.
3111 N. 28th Street, P.O. Box 1246
Escanaba, MI 49829

The restrictions governing the use and disclosure of data/technical data marked with this legend are set forth in the definition "Limited Rights" in paragraph (b)(3) of DFARS 252.227-7013.

Article 25 Software Rights

A. Title to and the right to determine the disposition of computer software, as defined in 48 CFR 27.401, to include computer software models, first developed under this agreement shall vest in the Recipient. Recipient shall release such computer software and models to the Government with Government Purpose Rights.

B. The Government and Recipient agree that the computer software and models listed in Attachment 4 were developed exclusively at Recipient's expense prior to execution of this agreement. Title to and the right to determine the disposition of the computer software and models listed in Attachment 4 shall remain with the Recipient. It is anticipated that the Recipient shall utilize the computer software and models listed in Attachment 4 as a part of its performance of the SOW under this agreement. Software listed in Attachment 4 is not a deliverable under this agreement. The Government shall

not acquire any right, title, interest in or license to the computer software and models listed in Attachment 4 as a result of Recipient's utilization of it under this agreement.

C. The Recipient reserves the right to protect by copyright original works that pertain to computer software and models first developed under this agreement. All such copyrights will be in the name of the Recipient. The Recipient hereby grants the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials that pertain to computer software and models developed under this agreement, and to authorize others to do so. The Recipient also grants non-exclusive, non-transferable, royalty-free, fully paid-up licenses to project sub-Recipients to use any copyrighted material developed under this agreement for research purposes as necessary to fulfill the requirements of this agreement.

D. The Recipient is responsible for affixing appropriate markings indicating rights on any computer software and models delivered to the Government with Government Purpose Rights or Restricted Rights, as shown below. The Government shall be deemed to have unlimited rights in all computer software and models delivered without markings.

E. General marking instructions: The Recipient, or its sub-Recipients or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software and models that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing software or model data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Computer software or software models transmitted directly from one computer terminal to another shall contain a notice of asserted restrictions. Reproductions of computer software or models, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

Computer software or software models delivered or otherwise furnished to the Government with Government purpose rights or limited rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS LEGEND

Agreement No: DAAE07-01-3-0004
Engineered Machined Products Inc.
3111 N. 28th Street, P.O. Box 1246
Escanaba, MI 49829

The restrictions governing the use and disclosure of software/software models marked with this legend are set forth in the definition "Government Purpose Rights" in paragraph (b)(2) of DFARS 252.227-7014.

RESTRICTED RIGHTS LEGEND
Agreement No: DAAE07-01-3-0004
Engineered Machined Products Inc.
3111 N. 28th Street, P.O. Box 1246
Escanaba, MI 49829

The restrictions governing the use and disclosure of software/software models marked with this legend are set forth in the definition "Restricted `Rights" in paragraph (b)(3) of DFARS 252.227-7014.

Article 26. Foreign Access to Technology

This article shall remain in effect during the term of the agreement and for a period of five (5) years thereafter. This article shall only apply to that technology (as defined under this Article) first made or generated under the SOW of this Agreement. The Government and Recipient expressly agree that this article shall not apply to Recipient inventions and technologies or limited rights data as defined within this agreement.

A. Definitions

"Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

B. General

The parties agree that research findings and technology developments in engine coolant system technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology first made or generated under the SOW of this agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et. seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- a. sales of products or components, or
- b. licenses of software or documentation related to sales of products or components, or
- c. transfer to foreign subsidiaries of the Recipient for purposes related to this agreement, or
- d. transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.

2. The Recipient shall provide timely notice to the Government of any proposed transfer from the Recipient of technology developed with Government funding under this agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Recipient.

3. In any event, the Recipient shall provide written notice to the Government of any proposed transfer to a foreign firm or institution at least 60 calendar days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty calendar days of receipt of the Recipient's written notification, the Grants Officer shall advise the Recipient whether it consents to the proposed transfer. In cases where the Government does not concur or sixty calendar days after receipt and the Government provides no decision, the Recipient may utilize the procedures under the article entitled "Disputes." No transfer shall take place until a decision is rendered.

4. Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is approved by the Government, the Recipient shall (a) refund the Government the funds paid for the development of the technology or (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

D. Lower Tier Agreements

The Recipient shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier sub-recipient agreements, regardless of tier, for experimental, development, or research work.

PART VII. TECHNICAL AND FINANCIAL REPORTING

Article 27. Quarterly Reports

On or before 90 calendar days after the effective date of this agreement and quarterly thereafter throughout the term of this agreement, the Recipient shall submit a quarterly report. Electronic copies shall be submitted or otherwise provided to the Government PM, Government PE, and Agreement Specialist. The report will have two major sections:

A. Technical Status Report. The technical status report will detail technical progress to date and report on all problems, technical issues or major developments during the reporting period.

B. Business Status Report. The business status report shall provide summarized details of the resource status of this agreement, including the status of the contributions by both parties. This report will include a quarterly accounting of current expenditures. Any major deviations shall be explained along with discussion of proposed actions to address the deviations.

Article 28. Final Report

A. Within 60 calendar days of completion or termination of this agreement, the Recipient shall submit a final report consisting of the technical achievements of the agreement. The report should be suitable for publication and is to provide a recap of the program, discussing program accomplishments. With the approval of the Government PM and the TACOM Protocol/Public affairs Officer, reprints of published articles may be submitted or attached to the technical portion of the final report. The final report shall be submitted to the Government PM and Agreement Specialist, with a copy to the Administrative Grants Officer.

B. The Recipient shall deliver the final report in accordance with the data rights specified in Attachment 5, and in accordance with Article 24, paragraphs C and D.

PART VIII. MISCELLANEOUS PERFORMANCE ISSUES

Article 29. Limitation of Liability

A. The Recipient agrees to indemnify and hold harmless and defend the government, its employees and agents, against any liability or loss for any claim, including the cost of litigation, made by an employee or agent of the Recipient, or persons claiming through them, for death, injury, loss or damage to their person or property arising in connection with the agreement, except to the extent that such death, injury, loss or damage arises solely from the negligence or willful misconduct of government employees.

B. The government shall not be liable to the Recipient, whether directly or by way of contribution or indemnity, for any claim made by any person or other entity for personal injury or death, or for property damage or loss, arising in any way from this agreement, including, but not limited to, the later use, sale or other disposition of research and technical developments, whether by resulting products or otherwise, whether made or

developed under this agreement, or whether contributed by either party, pursuant to this agreement, except as provided under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.) or other Federal law where sovereign immunity has been waived. The Recipient shall indemnify the government against all such claims or proceedings and shall hold the government harmless for any resulting liabilities and lawsuits provided the Recipient is reasonably notified of such claims and proceedings.

Article 30. Using Technical Information Resources

To the extent practical, the Recipient will use the technical information resources of the Defense Technical Information Center (DTIC) and other Government or private facilities to investigate recent and on-going research and avoid needless duplication of scientific and engineering effort.

Article 31. Procurement Standards

The Recipient will:

- A. Follow basic principles of business intended to produce rational decisions and fair treatment in all contracts entered into under this agreement.
- B. Comply with federal statutes, executive orders, regulations, and other legal requirements applicable to contracts entered into under this agreement.

Article 32. Flow Down Provisions

The Recipient shall include flow down provisions required in Appendix A to DoDGARs Part 34, except that laws addressing equal employment opportunity do not apply to work performed outside the U.S.A. and its possessions. In addition, the Recipient shall apply the provisions to DoDGARs Part 32 to any sub-awards to institutions of higher education, hospitals, and other non-profit organizations in accordance with DoDGARs 32.1 (d), and apply the provisions of DoDGARs Part 34 to any sub-awards to For-profit organizations, in accordance with DoDGARs 34.1 (b)(2).

Article 33. Future Discount Pricing

The engine pump technologies developed under this agreement may lead to the future manufacture, for purposes of commercial sale, of one or more versions of the pumps. The Recipient hereby agrees to sell to the U.S. Government at any time in the future, for Government purposes, any or all commercial versions of the pumps, at prices equal to or lower than the most favorable prices paid by any of their commercial customers; provided, however, that this provision shall only apply if the pumps requested by the Government from Recipient are substantially similar to pumps Recipient sells to one or more of its commercial customers.

PART IX. CERTIFICATIONS

Article 34. Certification

By signing the agreement or accepting funds under the agreement, the Recipient provides the:

- A. Certification at Appendix C, 32 CFR Part 25 regarding Drug-Free Workplace Requirements.
- B. Certification at Appendix A, 32 CFR Part 25 regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions.
- C. Certification at Appendix A, 32 CFR Part 28 regarding Lobbying.
- D. Assurance at 32 CFR Part 56.9(b) regarding Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense.
- E. Assurance at 32 CFR 195.6 regarding Nondiscrimination in Federally Assisted Programs of the Department of Defense--Effectuation of Title IV of the Civil Rights Act of 1964.
- F. Compliance with E.O. 11246 as amended by E.O. 11375 as supplemented by regulations at 41 CFR Part 60 regarding federal contract compliance with Equal Employment Opportunity.
- G. Compliance with the Clean Air Act at 42 U.S.C. 7401 and the Federal Water Pollution Act at 33 U.S.C. 1251 et seq, as amended. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).